OD-142

ORDER SHEET

IA NO. CA/1/2017 (Old No:CA/244/2017)
In
EC/20/2006

IN THE HIGH COURT AT CALCUTTA
ORIGINAL JURISDICTION
ORIGINAL SIDE

DALAL STREET SECURITIES LTD.
VS
OL, H.C.O.S & ANR.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 29th August, 2024.

Appearance:
Mr. Sourojit Dasgupta , Adv.
Mr. Indranil Bose, Adv.
. . .for the applicant

The Court: None appears for the company at the time of call.

The moot question to be decided in the present application is as to whether the company in question, namely, Kanoi Plantation Private Limited was wound up or not.

Learned counsel for the petitioner submits that contradictory orders passed in different proceedings appear from the records, casting a doubt as to whether the company has actually been wound up.

By an order dated August 23, 2004 passed in CP/349/2004, a winding up petition was admitted for a sum as specified therein, giving an opportunity to the company to make payment of the sums specified in 24 monthly instalments as per the schedule given therein.

In case of default of payment of any of the instalments, the petitioning creditor was given an opportunity to take steps for recovery of the balance sum

then remaining due by initiating appropriate proceeding including execution proceedings by treating the said order as the decree of the Court.

However, by an order dated August 24, 2004 recorded in a different proceeding bearing CP/71/2003, it was recorded that the company was wound up. It was also recorded that so long as the instalments as mentioned therein are paid, the order of winding up would remain stayed. In default of making payment of any of the instalments, however, it was recorded that the order of winding up would immediately become enforceable and the Official Liquidator would forthwith take possession in terms of the order.

By a subsequent order recorded in CP/71/2003, a different co-ordinate Bench recorded on February 1, 2010 that the Official Liquidator had confirmed that the company has not been wound up, under which circumstances CA/586/2009 was allowed by recording that the company had not been wound up in proceedings arising out of CP/71/2003. The order further recorded that in the event it was recorded that the company had been wound up, the Registrar of Companies should make appropriate corrections in the records, including in the official website.

The predicament which arises, according to the petitioner, is that the order dated February 1, 2010 did not take into account the previous orders. The contention of the petitioner is that the instalments were not paid in terms of the previous orders, as such entailing that the winding up of the company would take effect.

In such event it is submitted that despite the recording in the order dated February 1, 2010 to the effect that the company had not been wound up,

the original company petition would then revive, entitling the petitioner to make appropriate prayers.

At this juncture, it transpires that the company is not represented today by its learned counsel.

The petitioner is directed to give a notice to the learned advocate previously appearing for the company indicating that the matter shall next be listed on September 5, 2024 for passing appropriate orders with regard to the company petition.

Accordingly, CA/244/2017 is disposed of with the observation that in consonance with the order dated February 1, 2010 passed in CP/71/2003 along with CA/586/2009 as well as the report filed by the Official Liquidator, the company, namely, Kanoi Plantation Private Limited has not been wound up till date.

However, in order to pass appropriate directions in respect of revival or otherwise of the company petition, CP/349/2004 shall be listed on September 5, 2024 under the heading “To Be Mentioned”.

The learned advocate-on-record for the petitioner shall serve a notice to that effect on his counterpart appearing for the company.

(SABYASACHI BHATTACHARYYA, J.)

bp./R.Bhar